



APPEAL OF DOGM AGENCY ACTION GROUSE CREEK AREA

We dispute that we are in violation of minerals rules as cited by Utah DOGM. We herewith cite evidence to substantiate our claim.

Response to: R 647-3-113 Mine Enlargement

We have made no attempt to enlarge, expand, or in any way increase any surface disturbance in the areas in question. We feel DOGM's use of the term "disturbed areas" is misleading as it infers that said disturbances were originated by us incident to our activities in the area, when in truth, said disturbed areas are not pits, trenches, high walls, etc. but actually portions large and small of a system of roads which has existed and been in use by the general public for decades. At the very least these roads, by virtue of their concurrent use by the public for a period of ten (10) years or more are classified by law as "PUBLIC PREScriptive EASEMENTS". Others in question actually carry Class D County road status

We feel DOGM's use of the term "Grouse Creek Quarry" is, at the least misleading, and quite possibly deceptive, since there presently is no quarry to be found anywhere in the subject area. Further, there is no use of heavy equipment of any kind, nor is there any extraction of subsurface mineral or material. In fact our operation in the area to this point consists of traversing certain of these public access roads to arrive at talus slides where we hand select stone and hand load stone onto light trucks for removal to a suitable location for packaging and shipment. Our position on this issue is that in as much as there is no open pit disturbance, nor any "typical mining activity", but merely the hands on collecting of select talus, and the navigation of area public rights of way that our activities with on our claims is of a casual use nature rather than that of a large mine for which we are being assessed. We feel that DOGM errs in it's attempt to assess this network of pre-existant public and class D county roads as portions of disturbance incident to ours or any other mineral claim activity in the area.

Response to: R 647-4-101 Filing requirements & Review Procedures

Here we must point out that the sum acreage total of those certain "disturbed areas" as stated by DOGM is in actuality portions of pre-existing public prescriptive easements and class D county roads in the area in question. No actual or typical mining activity of any sort is being conducted by our concern neither off, nor near any of these said public roads.

(2)

Response to R 647-4-101 continued

We contend that there is in reality, no surface disturbance incident to our operations in the area, and that because of this fact, despite the clever wording of DOGM in it's reports, etc. a "notice to commence large mining operations" should not be required. It is our contention that the area in question be dealt with and handled as a casual use area. All facts surrounding the operator's claim activities thereon attest to this being the only fair and common sense approach.

Response to: R 647-4-107(6) OP. Practices-Concurrent Reclam.

Again, our position is that in as much as these "alleged" disturbed areas consist totally of portions of public prescriptive easements and Class D County roads, the Reclamation or closure of parts or portions of these roads is not the jurisdiction of DOGM, and that such can only be accomplished through due process as is constitutionally guaranteed all who have an interest therein. That holding Utah Building Stone liable for same is a violation of constitutional rights and rights of the 1872 law as amended to prudently work it's valid claims.

SUMMARY AND EXPLANATIONS/CONCLUSION

UBSS activities in subject area are related more to the casual use of a series of valid claims and mineral lease areas than to what DOGM refers to as mining or even quarrying. Both references of which, infer the actual surface disturbing of tracts of ground by means of digging, trenching, drilling, blasting, and soil and waste stocking, etc. none of which presently exists to any degree in the subject area. There has been absolutely no degradation to the area as a result of UBSS claim and lease working activities to date. Certain of the alleged disturbed areas, by virtue of their status as Class D County roads cannot be altered in any way or fashion, and hence, could not qualify as degrading.

DOGM attempts to halt UBSS activities on it's valid claims of talus and area ledges and outcroppings, by taking official agency action. Effectively preventing UBSS from the prudent working of it's mineral rights in this area by attempting to classify certain portions of documented public prescriptive easements and Class D County roads as "disturbed areas" incident to mining activity exclusively by UBSS, and rendering said tracts subject to reclamation policies and practices of the mining law.

(3)

That the acreage of said roads is solely the sum of the DOGM defined "disturbed areas" which exceeds five (5) acres thereby necessitating "Large Mine Status". UBSS believes that such edicts should be in place only after due process and not at the whim of an agency agenda which seeks to force large mining status regardless of actual claim working process or activities.

UBSS has spent in excess of three decades promoting and building a market for area talus. Because of problems incident to status of operation as subject to DOGM has lost much of what it had built up in regular clientele, and has felt compelled to put other customers in a wait and see mode. Neither result has been good for their business. The cost in lost revenue has been considerable.

By virtue of the pre-existing status of area public prescriptive easements and class D county roads, and the fact that said roads are and have been utilized by a myriad of multiple users, including UBSS for decades, these special public rights of way should remain open or unchanged in their status and not included in any concurrent reclamation demands of a formal notice of intent to commence large or small mining operations.

UBSS and it's assigns believe that it's use and activities on it's area claims together with area road status and other points of a multiple use nature, qualify said area as a "Casual Use" area, and subject to the guidelines so attached.

Question over the definition of the term "cause" 3809.1-3
as in "cause a cumulative surface disturbance of..."

We do not believe that merely traversing existing multiple use routes/roads on public ground constitutes a "cause of surface disturbance." We believe that the term "cause" as used in this context is open to interpretation. That to truly "cause" surface disturbance in the context of accessing project areas across federal lands, the operator must construct these routes/roads solely for the purpose of accessing their respective project areas as mentioned in paragraph (b) wherein the rule states "Consultation with the authorized officer may be required under paragraph (c) (3) of this section when the construction of access routes is involved." Simple use of existing public roads does not constitute construction and thereby surface disturbance.

UBSS is most certainly not the sole user, nor even the primary user of any of the roads or routes in question. It's use of pre-existing multiple use roads does not constitute a "cause of surface disturbance". Actual surfaces of these routes, by definition public prescriptive easements, would be disturbed whether UBSS used them or not, as others of the public, to whom these roads belong use them in their pursuits in the use and enjoyment of their public lands.

We do not believe that either the federal government nor the state has jurisdiction over the roads or routes in question. In their present status as Class D County roads and Public Prescriptive Easements, the roads in question cannot be assessed as causes of surface disturbance.

In a recent meeting with Box Elder County commissioners, road supervisors, and surveyors, UBSS was informed that to alter or close Class D County roads is a crime subject to prosecution and penalty of the law. Such alterations and/or closures would likely leave the county open to law suits brought by other road users adversely affected by such alterations or closures. They in turn would be compelled to bring suit against those who altered, or caused said alterations or closures. In effect, DOGM is attempting to force UBSS to break the law.

FURTHER, to illustrate the questionable nature of a literal interpretation of 3809.1-3 paragraph (a) it should be pointed out that there are all manner of public roads of one classification or another dissecting federal and state lands. Among these are state and interstate highways and county and private roads. All with the exception of those private, share a common characteristic despite differences in grade of improvement which is, that they are used by the public. To drive upon these roads would hardly constitute disturbance or construction.

PURPOSE IN IDENTIFYING DISTURBED AREAS AND RECLAMATION

The purpose in identifying disturbed areas incident to mining is to insure their concurrent or post mining reclamation. Reclamation means restoring to a natural state, or a pre-mining state, as close as possible, those areas which have been disturbed as a result of the mining activity so as to insure that there is no undue degradation upon those areas.

★ According to the "Right of Way Across Federal Lands Act", a public right of way exists whenever and wherever there has been a use by the public of a road, street, trail, or other access for a period of ten years.

All of the roads in question qualify as public rights of way. We do not believe such roads can legally be included or classified by DOGM as areas of surface disturbance incident to mining, and thereby subject to reclamation policies and procedures. We do not believe that DOGM has the sole and unchallengeable right to decide the fate of any qualifying public right of way regardless of grade or classification.

DOGM is exceeding it's authority in it's attempt to force UBSS to close/destroy portions of said public rights of way. Further, that to hold UBSS in non-compliance, and to forbid them access to their valid claims and leases through official agency action as a result of their refusal to close or destroy said roads is a grave misuse of DOGM authority and public trust, and one for which they must be held liable.